IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 796 of 2003

For Approval and Signature:

THE HON'BLE MR.JUSTICE J.R.VORA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PINKY ALIAS PINTU AVDESH RAJARAM SHARMA-Appellant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Appellant No(s).: 1.
MR AMRISH K PANDYA for Petitioner No(s).: 1.
MR SP HASURKAR, APP for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE J.R.VORA

Date : 15/06/2005

ORAL JUDGMENT

1. Heard learned advocate Mr.Amrish Pandya for the appellant and learned APP Mr.S.P.Hasurkar for the respondent – State.
2. ADMIT.
3. The Record and Proceedings of the trial Court is received and perused. Learned advocate for the appellant, so far as final hearing of appeal is concerned restricts himself to the quantum of sentence awarded to the present appellant. Learned advocate Mr.Amrish Pandya and learned APP Mr.S. P. Hasurkar were heard on this aspect and no contentions were raised on merits of the case, by the learned advocate for the appellant.
4. The present appellant was convicted by the learned Additional Sessions Judge, Court No.10, Ahmedabad City, vide his judgment and order dated 19.09.2002, in Atrocity Criminal Case No.20 of 2001. The appellant was found guilty for the offence punishable under Section 326 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of four years and to pay a fine of Rs.7,000/- in default to pay fine, to undergo rigorous imprisonment of one year. Out of the amount of fine of Rs.7,000/-, it was directed that the amount of Rs.5,000/- shall be paid by way of compensation to the complainant. The appellant was also found guilty for the offence punishable under Section 135(1) of the Bombay Police Act and was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.500/-, in default to pay fine, to undergo simple imprisonment of three months. It was further directed by the trial Court that both the sentences should run concurrently. Against the abovesaid judgment and order, this appeal is preferred by the appellant being accused of the said Atrocity Criminal Case No.20 of 2001.
5. Both the learned counsels drawn the attention this Court to the jail remarks submitted on record. The jail remarks

denotes that out of four years rigorous imprisonment awarded to the appellant, he had already undergone imprisonment of 02 years, 06 months and 17 days, on 20th April, 2005. As per remarks made in foot note, the appellant is also given set off of 335 days, in pursuance of the direction of the trial Court. The jail authorities have remarked that the appellant is entitled to remission for 335 days in the period of imprisonment imposed upon him. The jail authorities have also noted in the said remarks that probable date of release of the appellant from jail, after serving of sentence would be 05.09.2005. Learned advocate for the appellant makes a statement that the appellant has already deposited an amount of fine of Rs.7,500/- before the trial Court. In these circumstances, it is argued by the learned advocate for the appellant that when the appellant has undergone almost substantive period of imprisonment and when he is likely to be released from the jail, after serving of sentence on 05.09.2005, this appeal be allowed to the extent that the quantum of punishment be substituted to the extent of imprisonment, already gone by the appellant instead of four years rigorous imprisonment inflicted by the trial Court.

6. Having heard the learned advocate for the parties. The request made by the learned advocate for the appellant appears to be reasonable and acceptable in above view of the matter that the appellant has already undergone substantive period of imprisonment inflicted upon him and he has deposited the amount of fine before the trial Court, which covers the amount of Rs.5000/- to be paid to the complainant, by way of compensation. Resultant effect of the above discussion would be, while maintaining the conviction inflicted upon the appellant for the offence proved against him under Section 326 of the Indian Penal Code as well as under Section 135(1) of the Bombay Police Act, the sentence awarded by the trial Court would be reduced to the extent to the period, the appellant undergone including set off and remission. This would affect, the release of the appellant from the jail, after serving of full sentence in pre-ponding by couple of months. In the facts and circumstances of this case and having regard to the above mentioned circumstances, the following final order is passed.

The appeal is partly allowed. While maintaining the conviction awarded to the appellant only interference is made in this appeal in respect of the quantum of sentence awarded to the appellant by the learned trial Judge. The imprisonment inflicted upon the appellant for the offences proved against him under Section 135(1) of the Bombay Police Act has already been served upon him. While sentence of imprisonment awarded to the appellant of four years by the learned trial Judge in respect of offence proved against him for Section 326 of the Indian Penal Code is reduced to the term of imprisonment, the appellant has already undergone. The only interference in the judgment and order impugned in this appeal is made to the above extent of reduction of sentence awarded and rest of the appeal of the appellant stands dismissed.

The appellant is directed to set at liberty forthwith, if he is not required to detain in Jail for any other purpose. Direct service is permitted.

[J. R. VORA,J.]

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